LIBRARY
SUPREME COURT, U.S

Office-Supreme Court, U. S.
FILED
MAY 10 1951
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

October Term, ~~1950~~ 51
No. 717 [redacted] 3

SAINT NICHOLAS CATHEDRAL OF THE RUSSIAN ORTHODOX CHURCH IN NORTH AMERICA,

Plaintiff-Appellee,

against

JOHN KEDROFF and BENJAMIN FEDCHENKOFF, as Archbishop of the Archdiocese of North America and the Aleutian Islands of the Russian Orthodox Greek Catholic Church,

Defendants-Appellants.

APPELLANTS' BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS OR AFFIRM

PHILIP ADLER,
Attorney for Defendants-Appellants,
8 West 40th Street,
New York 18, N. Y.

SUPREME PRINTING CO., INC., 41 MURRAY STREET, N. Y., BARCLAY 7-0349

Supreme Court of the United States

October Term, 1950

No. 717

SAINT NICHOLAS CATHEDRAL OF THE RUSSIAN ORTHODOX CHURCH IN NORTH AMERICA,

Plaintiff-Appellee,

against

JOHN KEDROFF and BENJAMIN FEDCHENKOFF, as Archbishop of the Archdiocese of North America and the Aleutian Islands of the Russian Orthodox Greek Catholic Church,

Defendants-Appellants.

APPELLANTS' BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS OR AFFIRM

1. *Kedrovsky* v. *Rojdestvensky* (214 App. Div. 483; affirm. 242 N. Y. 547) held that Saint Nicholas Cathedral was not part of the metropolitan district, but was part of the American Archdiocese and was subject to the jurisdiction of the central church authorities. The civil power may not, without violating the guarantees of religious liberty, compel such a cathedral to renounce its canonical allegiance to the Patriarch and to subject it to the jurisdiction of a rival church.

2. The basic error of appellee's position is emphasized by its contention, also made by the majority in the Court of Appeals (302 N. Y. 29, 22), that the statute subjects to the jurisdiction of the metropolitan district and its elected archbishop *only* those patriarchal churches which were established *before* 1924, leaving the churches established

after 1924 free to adhere to the Patriarch. No rational reason is or can be advanced for differentiating Russian churches established before 1924 from those established after that date. Since Article 5-C deals solely with *incorporated* Russian churches, the proferred constitutional justification for the statute then comes to this: we are to "presume" that the legislature made a "finding" that the Patriarchal Church is not "free", is not a "true" religious body, is a "tool" of the Soviet Government; consequently the legislature suppressed only those *incorporated* patriarchal churches which were established *before* 1924!

The motion to dismiss or affirm should be denied.

Respectfully submitted,

PHILIP ADLER,
Attorney for Defendants-Appellants.

PHILIP ADLER,
EDWARD M. GARLOCK,
of Counsel.